

DOCUMENT NUMBER

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[Claim for Expenses Incurred in Preparation for Performance of a Contract]. E-189266. September 7, 1977. 2 pp.

Decision re: Murray Mintz Films; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel; Procurement Law I.  
Budget Function: General Government: Other General Government (806).

Organization Concerned: Bureau of Outdoor Recreation.  
Authority: E-182437 (1976).

An Authorized Certifying Officer of the Bureau of Recreation requested a decision as to whether a claim for reimbursement of expenses incurred in preparation for the performance of a contract could be paid. The claim was not paid since the actions by the offeror were induced by Government personnel without the authority to bind the Government contractually and since the contract was not awarded and the Government received no benefit. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-18926E

**DATE:** September 7, 1977

**MATTER OF:** Murray Mintz Films

**DIGEST:**

Claim by offeror for expenses incurred in preparation for performance of contract which were induced by Government personnel without authority to bind Government contractually may not be paid where contract was not awarded and Government received no benefit.

The Department of the Interior (Interior), Bureau of Outdoor Recreation (BOR), issued request for proposals (RFP) No. RFP-BOR 1-77 on October 13, 1976, for the production of a 13-20 minute, 16mm color and sound motion picture depicting outdoor recreation benefits of environmental protection programs.

A number of proposals were submitted and were evaluated by employees of the Pacific Southwest Regional Office of BOR. The proposal of Murray Mintz Films (Mintz) was selected for award. Mintz and the other offerors were notified. On November 15, 1976, Murray Mintz met with a representative of BOR's regional office to discuss the proposal and to establish plans for initiation of work on the contract. Mintz was assured that he would be awarded the contract. BOR's regional staff, however, had no authority to bind the Government contractually. The RFP stated, "the contracting officer is the only person who can legally commit the Government to the expenditure of public funds." BOR sent Mintz a copy of the contract on November 17, 1976. The contract was to be signed by Mr. Mintz and returned to BOR for approval and award by the contracting officer.

From November 15 through November 25, Mintz, with the knowledge and concurrence of BOR's regional staff, scouted locations, purchased film, leased equipment and obtained a free lance staff in preparation for filming. On November 26, Mintz was advised that certain problems had arisen which would require postponement of the filming, and to refrain from further expenditures pending execution of the contract. Mintz signed the contract on December 8, 1976, and returned it to BOR for acceptance.

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On December 17, 1976, the Office of the Solicitor, Interior, decided that the proposed contract should not be awarded due to procedural errors in the evaluation process. Mintz was notified of this decision on January 7, 1977. Subsequently, BOR canceled the RFP stating that the Government no longer required the film.

Mintz has submitted a claim to BOR in the amount of \$2,671.59 for expenses incurred in preparation for filming. Interior has advised BOR that the claim cannot be paid on a quantum meruit/quantum valebant basis as the Government did not receive a tangible benefit. By letter dated June 2, 1977, an authorized certifying officer of BOR has requested our decision as to the propriety of paying this claim. The certifying officer states, "Recognizing that Mr. Mintz incurred these costs in good faith on the assurance of Bureau staff that he would be awarded the contract, the Bureau would have no objection to making payment against this claim if you approve."

In Monitor Products Company, Inc., B-182,37, July 27, 1976, 76-2 CPD 85, we stated that, although the United States cannot be bound beyond the actual authority conferred upon its agents by statute or regulation, payment on a quantum meruit/quantum valebant basis may be recognized where it is shown that the Government received a benefit and the unauthorized action has been ratified by an authorized contracting official of the Government. We agree that payment is not appropriate on a quantum meruit/quantum valebant basis in this case because the Government has not received a benefit.

Accordingly, the claim may not be paid.

*R. F. Keenan*  
Deputy Comptroller General  
of the United States